

Protecting and Promoting Competition

Spring 2009



Scott D. Hammond, Acting Assistant Attorney General, moderating the Cartel Working Group panel at the International Competition Network Conference in Kyoto, Japan in April 2008.

CRIMINAL ENFORCEMENT: ANOTHER BUSY YEAR

The Division's Criminal Enforcement Program maintained a vigorous docket over the last year. In fiscal year 2008, the Division filed 54 cases against 59 individuals and 25 companies, the highest year-end case total since 2000. The Division prosecuted price fixing, bid rigging, market and customer allocations, and other fraudulent, anticompetitive schemes in a multitude of industries affecting the daily lives of consumers and taxpayers. Affected products and industries include household and personal electronics, air transportation, the oil industry, communications technology in disadvantaged schools

and libraries, supplies and services for military troops in Iraq and Afghanistan, hurricane remedial work, and power generation. At the close of fiscal year 2008, the Division had 137 pending grand jury investigations, the greatest number of pending grand jury investigations since 1992. The Division obtained more than \$700 million in fines in fiscal year 2008, then the second highest amount of fines obtained by the Division in a single year. However, the Division surpassed that record in just the fourth month of fiscal year 2009, and its fine total for fiscal year 2009 already exceeds \$745 million. The Division maintained a high average prison sentence of 25 months for fiscal year 2008 and achieved a record average jail sentence for foreign nationals of 18 months. In November 2008, the Division issued revised model leniency letters and the policy paper "Frequently Asked Questions (FAQs) Regarding the Antitrust Division's Leniency Program and Model Leniency Letters" and created a leniency page on its website, containing the FAQs, other leniency policy speeches, the corporate and individual leniency policies, model leniency letters, and leniency application information.

Liquid Crystal Display Panels

The Division's ongoing investigation into price fixing of thin film transistor-liquid crystal display (TFT-LCD) panels has resulted in

charges against four foreign manufacturers, one U.S. subsidiary of one of the manufacturers, and seven foreign executives to date. These price-fixing conspiracies harmed the countless American consumers who use computers, cell phones, and other household electronics containing TFT-LCD panels every day. The conspiracies are among the largest and most far-reaching—the worldwide market for TFT-LCD panels in 2006 was approximately \$70 billion.

In December 2008, LG Display Co. Ltd. (LG) of South Korea and its California subsidiary LG Display America Inc. pleaded guilty to fixing prices of TFT-LCD panels and were sentenced to pay a \$400 million criminal fine—the second largest fine in Antitrust Division history. In January 2009, Taiwanese manufacturer Chunghwa Picture Tubes Ltd. (Chunghwa) pleaded guilty to participating in the same conspiracy and was sentenced to pay a \$65 million fine. In December 2008, Japanese manufacturer Sharp Corp. pleaded guilty to participating in three separate conspiracies to fix prices of TFT-LCD panels sold to Dell Inc., Apple Computer Inc., and Motorola Inc., and it was sentenced to pay a \$120 million fine. In March 2009, the Division charged Japanese manufacturer Hitachi Displays Ltd. with fixing prices of TFT-LCD panels sold to Dell for use in desktop monitors and notebook computers. Hitachi has agreed to plead guilty and pay a \$31 million fine. In January 2009, the former Chairman and CEO of Chunghwa, two other Chunghwa executives, and an LG executive were charged with fixing prices of TFT-LCD panels. In February 2009, the executives entered guilty pleas and were sentenced to serve

between six and nine months in prison and pay fines ranging from \$20,000 to \$50,000. Also in February 2009, two former Chunghwa executives and one former LG executive were indicted for fixing prices of TFT-LCD panels from 2001 until December 2006.

Cathode Ray Tubes

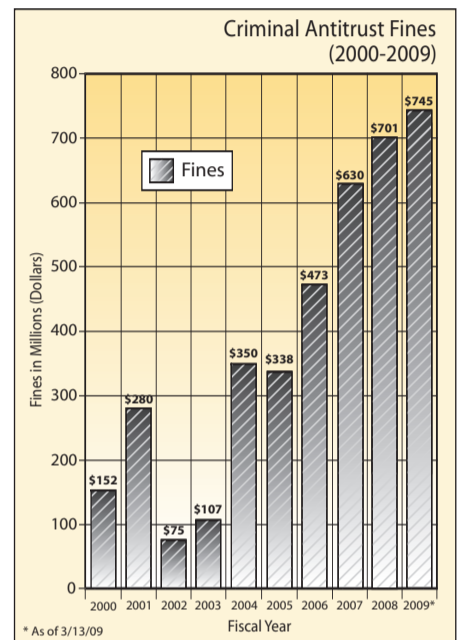
The Division recently brought its first charges in its ongoing investigation of collusion in the cathode ray tube industry. On Feb. 10, 2009, a federal grand jury in San Francisco returned a two-count indictment against the former Chairman and Chief Executive Officer of Chunghwa Picture Tubes Ltd. for his participation in global conspiracies to fix prices of two types of cathode ray tubes—color display tubes used in computer monitors and other specialized applications and also color picture tubes used in television sets. The worldwide market for cathode ray tubes, including color display tubes and color picture tubes, in 1997, at the start of the conspiracies, has been estimated as approximately \$26 billion.

Air Transportation

The Division continues its prosecution of price-fixing conspiracies in the air transportation industries. A total of 12 companies and three individuals have now pleaded guilty to participating in these conspiracies. To date, criminal fines

of more than \$1 billion have been imposed in the investigation, and three executives have been sentenced to serve jail time. Since March 2008, Japan Airlines International Co. Ltd.; Martinair Holland N.V.; Cathay Pacific Airways Limited; SAS Cargo Group A/S;

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Source: DOJ Antitrust Division

SIGNIFICANT EVENTS 2008-2009

- Division obtains 90-month prison sentence against former consultant convicted at trial for rigging bids and defrauding federal program providing Internet funding for schools. (March 2008)
- Division sues Consolidated Multiple Listing Service of Columbia, South Carolina, challenging rules restricting competition among real estate brokers. (May 2008)
- Division eliminates restrictions impeding Internet-based real estate brokers from competing with traditional brokers through settlement of its action, originally filed in September 2005, against the National Association of Realtors. (May 2008)
- Court denies motion to dismiss, allowing Division suit challenging transactions combining the ownership of two Charleston, West Virginia newspapers to proceed. (June 2008)
- Air France and KLM Royal Dutch Airlines (which operate under common ownership) plead guilty for role in conspiracy to fix prices in the air transportation industry and are fined \$350 million, the third highest fine ever obtained by the Division. (July 2008)
- Division files its first charges in its ongoing investigation of fraudulent schemes involving rigging bids and defrauding the EPA by inflating invoices to cover kickbacks at two New Jersey Superfund sites; to date, eight defendants have pleaded guilty. (July 2008)
- Former purchasing assistant at the New York Power Authority, a non-profit energy corporation providing low-cost power to government agencies, municipalities, and private entities, pleads guilty to conspiring to defraud the Authority in a bribery scheme in which he accepted kick-back payments from a vendor. (August 2008)
- Department of Justice issues report concerning monopolization entitled *Competition and Monopoly: Single-Firm Conduct Under Section 2 of the Sherman Act*. (September 2008)
- Division sues JBS S.A. and National Beef Packing Company LLC, challenging proposed merger of the nation's third and fourth largest beef packers. The transaction is subsequently abandoned. (October 2008)
- Division obtains consent decree requiring divestiture of assets in 22 states to resolve competitive concern arising from merger of Verizon Communications Corp. and Alltel Corp. (October 2008)
- After Division states that it will challenge advertising agreement between Yahoo! Inc. and Google Inc., the agreement is abandoned. (November 2008)
- Department of Justice issues report concerning telecommunications industry entitled *Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers*. (November 2008)
- Division issues revised model leniency letters and *Frequently Asked Questions Regarding the Antitrust Division's Leniency Program and Model Leniency Letters*. (November 2008)
- Division obtains consent decree requiring divestiture of 61 branch banking offices to resolve competitive concerns arising from merger of PNC Financial Services Group Inc. and National City Corp. (December 2008)
- Division sues Microsemi Corp., challenging its acquisition of Semicore Inc. assets and resulting harm to competition in development, manufacture, and sale of semiconductor devices. (December 2008)
- LG Display Co. Ltd., Sharp Corp., and Chunghwa Picture Tubes Ltd. plead guilty and are fined a total of \$585 million for role in conspiracies to fix prices of LCD panels. LG's \$400 million fine is the second highest fine ever obtained by the Division. (December 2008 & January 2009)
- Division obtains 48-month sentence against former executive for role in conspiracy involving coastal water shipping between the continental United States and Puerto Rico, marking the longest sentence ever imposed for a single antitrust charge. (January 2009)
- Division obtains more than \$2 million from AT&T Inc. as part of civil settlement resolving Division's claim that AT&T was in contempt of a hold-separate order requiring AT&T to operate businesses separately and independently before their divestiture. (January 2009)
- Retired U.S. Army Major pleads guilty to bribery and making a false statement, marking latest plea in Division's ongoing investigation of procurement fraud undermining military efforts in Iraq and Afghanistan. Through February 2009, a total of 21 individuals and six companies have been charged. (January 2009)
- Three residents of Taiwan and one Korean plead guilty for role in global conspiracy to fix prices of LCD panels, marking the first residents of Taiwan to agree to U.S. imprisonment for an antitrust offense. (February 2009)
- Three more airlines plead guilty and are fined for role in conspiracy to fix prices in the air transportation industry, the Division's ongoing investigation of which, through February 2009, has resulted in guilty pleas from 12 airlines and three individuals and more than \$1.1 billion in fines. (February 2009)

MEET WILLIAM D. DILLON & DEANA L. TIMBERLAKE-WILEY, ATTORNEY GENERAL AWARD RECIPIENTS

William D. Dillon and Deana L. Timberlake-Wiley, trial attorneys, are two members of the outstanding and dedicated group of attorneys, paralegals, and administrative staff in the Division's Atlanta Field Office. Dillon joined the Division in 1988 through the Department's Honors Program. Timberlake-Wiley joined the Division in 1997 as a lateral attorney from private practice. Since joining the Division, both Dillon and Timberlake-Wiley have worked on numerous high profile criminal investigations with outstanding results. In particular, Dillon led the investigation and prosecution of corporations and their executives for bid rigging on U.S. AID-funded contracts to construct wastewater treatment plants in Cairo, Egypt. The investigation resulted in the government obtaining criminal fines of more than \$141 million and restitution of more than \$13.7 million. Timberlake-Wiley led the investigation and prosecution of numerous individuals for rigging bids at real estate foreclosure auctions in Northern Virginia and the surrounding area, which resulted in significant criminal penalties.

The most recent highlight of their careers as criminal litigators involved their role in the investigation and prosecutions in the Division's Alabama Sewer Rehabilitation investigation, in which Dillon served as the lead attorney. This dynamic team joined forces in the fall of 2005, returning a 127-count indictment to prosecute public officials and contractors in a very complex and significant public corruption case in the Northern District of Alabama involving the Jefferson County, Alabama Environmental Services Department (JCESD) and its award of sewer rehabilitation contracts for the county. Specifically, Dillon and Timberlake-Wiley helped uncover evidence that sewer rehabilitation contractors and engineering firms sought to subvert the competitive bid process by making more than \$1 million in bribes to corrupt Jefferson County officials responsible for oversight of the county's \$3 billion sewer rehabilitation project in the form of cash, gifts, or services to obtain contracts. The bribery scheme involved improprieties by Jewel "Chris" McNair, the Jefferson County Commissioner who had oversight of JCESD;



Trial attorneys William D. Dillon and Deana L. Timberlake-Wiley from the Atlanta Field Office.

Jack W. Swan, Director for JCESD; Clarence R. Barber, Sewer Construction and Maintenance Supervisor for JCESD; and their associates. The bribery scheme cost the taxpayers of Jefferson County tens of millions of dollars in losses due to fraud, overcharges, and misappropriated resources.

The team was responsible for the successful prosecution and conviction of 21 defendants—seven Jefferson County, Alabama officials, nine individual contractors, and five firms. Defendants were charged with multiple counts of conspiracy to commit bribery, bribery, honest services mail fraud, and obstruction of justice.

Dillon and Timberlake-Wiley resolved cases against seven of the 21 defendants by plea agreement, and obtained convictions against the other 14 defendants in five separate trials over a nine-month period. The sentences of the 21 defendants resulted in more than \$45.7 million in criminal fines, a total of 16,375 jail days, and more than \$2.3 million in restitution to Jefferson County.

As a result of their outstanding work on this investigation, Dillon and Timberlake-Wiley received the Assistant Attorney General's Award in 2007 and the Attorney General's Award for Distinguished Service in 2008. In 2008, Dillon also received the Division's Hugh Morrison Award in recognition of his long-term achievement as an outstanding antitrust litigator.

MERGER ENFORCEMENT

Hart-Scott-Rodino (HSR) filings were steady in the first six months of 2008 but declined substantially during the second half of 2008 and the first quarter of 2009. Since March 2008, the Division has filed nine merger enforcement actions and the parties restructured two additional transactions in response to Division investigations. Currently, the Division has two merger cases in active litigation.

The cases the Division brought illustrate the range of the Division's enforcement decisions and their effect on important areas of the United States economy.

JBS Proposed Acquisition of National Beef Packing Co.

On Oct. 20, 2008, the United States filed a case alleging that JBS S.A.'s proposed acquisition of National Beef Packing Company would likely lessen competition in the purchase of fed cattle and in the sale of USDA-graded boxed beef to retailers. Seventeen states joined the challenge to the transaction. The acquisition would have created the largest U.S. beef packer, with an ability to slaughter more than 40,000 head of cattle per day (or more than one-third of U.S. fed cattle packing capacity) and annual beef sales of more than \$14 billion. Four months after the action was filed, the parties announced the abandonment of the transaction.

In its complaint, the United States alleged that JBS's acquisition of National would have substantially restructured the beef packing industry, eliminating a competitively significant packer, and placing more than 80 percent of domestic fed cattle packing capacity in the hands of three firms: JBS, Tyson Foods Inc., and Cargill Inc. The transaction also would have eliminated head-to-head competition between JBS and National and made interdependent or coordinated conduct among JBS and the other two significant packers more likely. The United States also alleged that the proposed merger likely would have resulted in lower prices paid to cattle suppliers and higher beef prices for consumers.

Microsemi

On Dec. 18, 2008, the Division filed a civil antitrust lawsuit against Microsemi Corp. alleging that its acquisition of Semicore Inc. eliminated or reduced competition in the development, manufacture and sale of certain types of semiconductor

devices used in military and space programs essential to the security of the United States. The transaction was not HSR-reportable.

In its complaint, the United States alleges that the acquisition eliminated competition and created a monopoly for small signal transistors that meet stringent standards of the Department of Defense (DOD). The United States also alleges that the acquisition reduced from three to two the number of likely competitors for ultrafast recovery rectifier diodes that meet DOD standards.

Shortly after filing suit, the Division sought preliminary relief to preserve the Semicore assets pending a trial of the Division's claims. On Dec. 24, 2008, Judge Anthony Trenga in the U.S. District Court in Alexandria, Virginia, entered an order requiring Microsemi to preserve and maintain the Semicore assets pending the outcome of the litigation.

Charleston Newspaper Litigation Update

On May 22, 2007, the United States filed a complaint challenging the completed acquisition of two newspapers in Charleston, West Virginia. In its complaint, the United States alleges that the owner of the *Charleston Gazette* purchased the *Daily Mail*, which had been owned by its partner in a joint operating agreement (JOA), with the purpose and intent to shut the *Daily Mail* down and only suspended its plan when the Division opened an investigation into the acquisition.

In July 2007, defendants moved to dismiss the complaint, arguing that the Department's claim failed to demonstrate a plausible right to relief because, among other things, the JOA had created an economically integrated joint venture in which competition between the newspapers had ceased to exist and the Newspaper Preservation Act immunized the acquisition from antitrust challenge. The court denied the motion in June 2008. In denying the motion, the court stated that genuine questions of fact existed as to whether all competition between the newspapers had ceased under the JOA and whether Newspaper Preservation Act immunity extended to the acquisition.

PNC and National City

On Dec. 11, 2008, the Division announced that PNC Financial Services and National



The JBS/National Beef Packing Co. case team.

City Corp. had agreed to sell 61 of National City's branch banking offices in western Pennsylvania, with deposits totaling approximately \$4.1 billion as of June 30, 2008, to resolve competitive concerns about the companies' merger. In addition, the companies agreed to divest approximately half of National City's lending and related business with middle market customers—generally, businesses with lending needs of more than \$1 million—in the Pittsburgh area, and virtually all National City's middle-market business in the Erie area.

The proposed merger was subject to the final approval of the Board of Governors of the Federal Reserve System. The Division advised the Federal Reserve Board that it would not challenge the merger provided that the agreed-upon divestitures occurred and the parties' commitments to the Division were included as a condition in the event the Federal Reserve Board enters an order allowing the transaction. Although the framework for the Division's review of bank mergers in conjunction with Federal Reserve review allows for expedited review for transactions involving financially troubled institutions, the review of the merger of PNC and National City did not implicate the expedited procedures.

Verizon and Alltel

In October 2008, the Division announced that it would require Verizon

Communications Corp. to divest assets in 22 states to proceed with its \$28 billion acquisition of Alltel Corp. As originally proposed, the transaction would have substantially lessened competition to the detriment of consumers of mobile wireless telecommunications services and likely would result in higher prices, lower quality, and reduced network investments. The divestitures cover the entire states of North Dakota and South Dakota; large portions of the states of Colorado, Georgia, Kansas, Montana, South Carolina, Utah, and Wyoming; and portions of the states of Alabama, Arizona, California, Idaho, Illinois, Iowa, Minnesota, Nebraska, Nevada, New Mexico, North Carolina, Ohio, and Virginia.

ECONOMIC ANALYSIS GROUP

This past year, the Division's Economic Analysis Group (EAG) addressed a range of challenges while reviewing a number of unusually complex merger filings in a wide variety of industries. The analyses employed by its large staff of Ph.D. industrial organization economists were critical to the Division's evaluation and successful resolution of these matters. EAG staff also engaged in a number of activities in the area of competition advocacy, including engaging with and training staffs of numerous competition agencies from around the world.

On the merger front, EAG's talents in analyzing competitive effects were exhibited in prominent investigations across a wide cross

section of industries. These industries included, among others, real estate (where EAG is currently supporting litigation in Columbia, South Carolina), health insurance (where EAG analysis supported remedying the competitive effects of United HealthCare's acquisition of Sierra), the newsprint industry (where the Division succeeded in modifying through consent decree Abitibi's merger with Bowater), airlines (where the Division reviewed the transaction between Northwest Airlines and Delta), and the beef packing industry (which involved monopoly and monopoly issues arising in the context of JBS's now-abandoned attempt to acquire National Beef Packing Co.). In addition, the Division's announced challenge to the agreement between Yahoo! and Google relied on empirical and theoretical work by EAG economists.

In the transaction between Abitibi and Bowater, the Division's challenge implicated a number of subtle issues relating to strongly declining demand for newsprint, the ability of the merging firms to restrict output unilaterally as a consequence of the merger, and the adequacy of candidate divestitures for resolving competitive concerns. In response to concerns raised during Tunney Act proceedings about the adequacy of the proposed relief obtained by the United States, the Division submitted and relied heavily upon an expert declaration prepared by EAG's staff economist on the matter, Nicholas Hill. In November, the court entered the proposed consent decree, agreeing with the Division that the settlement was indeed in the public interest.

EAG's work regarding United HealthCare's acquisition of Sierra addressed several key economic issues in the increasingly important health care arena. These included the possibility of post-merger exercise of monopoly power, or exercise of market power, in the sale of commercial health insurance to employers, as well as concern over competition in the sale of Medicare Advantage plans to senior citizens in the Las Vegas area. Regarding Medicare Advantage, EAG identified significant benefits of competition among incumbent Medicare Advantage plans (notwithstanding the availability of conventional Medicare coverage) and developed persuasive evidence that entry would be unlikely to fully replace the loss in competition for a considerable period of time. Other competitive concerns were eliminated after careful examination of, among other things, shares of provider revenues, commercial enrollment accounted for by the merging

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Société Air France; KLM Royal Dutch Airlines; LAN Cargo S.A.; Aerolinhas Brasileiras S.A.; El Al Israel Airlines Ltd.; and three executives of Qantas Airways Limited, SAS, and British Airways have pleaded guilty to fixing air transportation rates. American businesses and consumers rely on the air transportation industry to provide the products they buy, sell, and use every day. Price fixing in the air transportation industry affected billions of dollars of goods shipped by air transportation, including produce, clothing, electronics, and medicine.

Coastal Shipping

In 2008, the Division charged four shipping executives with allocating customers, rigging bids, and fixing prices for coastal shipping services between the United States and Puerto Rico. All have pleaded guilty to the charges. Sales of freight services in the United States to Puerto Rico shipping lane total hundreds of millions of dollars every year, as ocean shipping is a primary way for people in Puerto Rico to receive essential goods. The defendants' employers shipped a variety of goods,

including heavy equipment, medicine, food, and consumer goods, between the United States and Puerto Rico.

In January 2009, one of the four, Peter Baci, was sentenced to serve 48 months in prison, which is the longest jail sentence ever imposed for a single antitrust count. The other defendants are awaiting sentencing. The Baci case represents the first time that an individual has been sentenced to more than three years for a single antitrust charge since Congress raised the maximum sentence for antitrust crimes from three years imprisonment to 10 years imprisonment in June 2004. A fifth executive has been charged with, and has pleaded guilty to, obstruction of justice in the investigation.

Marine Hose

The Division's investigation of collusion in the marine hose industry continues. Marine hose is used to transfer oil between tankers and storage facilities and is purchased by Shell, Exxon, Chevron, and other companies that are involved in the offshore extraction and transportation of petroleum products. It is also purchased and used by the Department of Defense. During the conspiracy, the conspirators sold hundreds of millions of dollars worth of marine hose and related products in the United States and elsewhere. To date, the Division has charged 12 individuals and two companies with fixing prices, rigging bids, and allocating market shares for sales of marine hose. The companies charged, Dunlop Oil & Marine Ltd. and Manuli Rubber Industries SpA, have been sentenced to pay fines totaling \$6.54 million. Nine individuals have pleaded guilty and been sentenced to serve a total of 12.5 years in prison in this investigation, two were acquitted at trial in November 2008, and one individual is awaiting trial. One of the individuals, Misao Hioki, was charged with the Sherman Act conspiracy and also with conspiring to make corrupt payments to foreign officials to secure business for Hioki's employer and its U.S. subsidiary in violation of the Foreign Corrupt Practices Act. Hioki pleaded guilty to the charges and was sentenced to serve two years in prison and to pay an \$80,000 fine.

Three of the individual defendants charged by the Division,

Peter Whittle, David Brammar, and Bryan Allison, were also charged by the U.K. Office of Fair Trading (OFT) under the U.K. Enterprise Act for committing a cartel offense. These charges were the first cartel charges brought by the OFT under the Enterprise Act. In June 2008, the Southwark Crown Court in the United Kingdom sentenced Whittle, Brammar, and Allison to terms of imprisonment of 36, 30, and 36 months, respectively. In November 2008, the U.K. Court of Appeal reduced the sentences to the terms recommended in the plea agreements the defendants had entered with the Antitrust Division, 30 months for Whittle, 20 months for Brammar, and 24 months for Allison.

E-Rate

The Division continues to prosecute bid rigging, bribery, and fraud in the federal E-Rate program. Congress created the E-Rate program to help economically disadvantaged schools and libraries obtain computer and telecommunications services. The Division has helped to uncover massive fraud in this program, and as a result of this investigation, a total of seven companies and 17 individuals have pleaded guilty or have been convicted or entered civil settlements and have paid, agreed to pay, or been sentenced to pay fines and restitution totaling more than \$43 million. More than 35 years of prison time have been imposed on defendants in this investigation, including a seven and one-half year sentence against Judy N. Green, a former California education consultant, who was convicted after trial in September 2007; a five year sentence against R. Clay Harris, the former president and majority owner of an Atlanta communications vendor, who was convicted after trial in July 2008; a two year sentence against Cynthia K. Ayer, a former South Carolina school technology director; and a one and a half year sentence against George Marchelos, a former school consultant and a sales representative for a New Hampshire communications company.

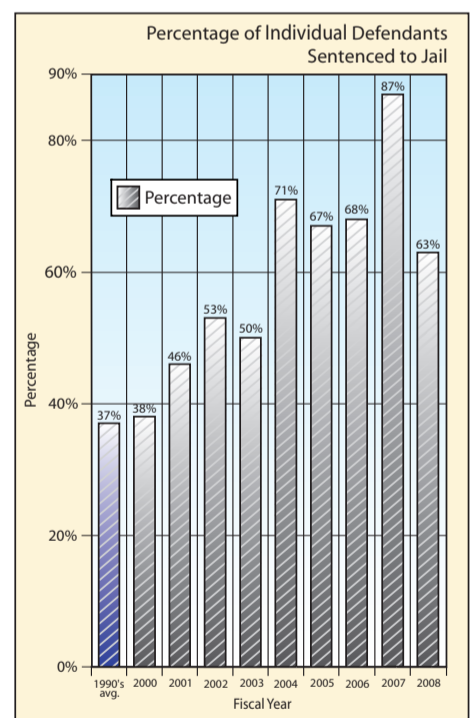
Procurement Fraud

The Division continues to play an active role on the Department's National Procurement Fraud Task Force. To date, the Division has charged a total of 21 individuals and six companies in its War Zone investigations. In 2008 and early 2009, the Division obtained guilty pleas from several army officers charged with various anticompetitive, bribery related schemes involving the award of contracts in support of the Iraq war. In January 2009, retired U.S. Army Major Christopher H. Murray pleaded guilty to bribery and making a false statement relat-

ed to his work as a contracting officer at Camp Arifjan, Kuwait. In December 2008, U.S. Army Reserve Major Theresa Jeanne Baker pleaded guilty to conspiracy and bribery charges related to her contracting work at Camp Victory, Iraq. In August 2008, U.S. Army Major James Momon Jr. pleaded guilty to bribery and conspiracy in connection with his contracting work at Camp Arifjan. In June 2008, retired U.S. Army Colonel Levonda J. Selph pleaded guilty to bribery and conspiracy relating to her contracting work at Camp Victory. Defense contractor Raman International Inc. also pleaded guilty in June 2008 to conspiracy to commit bribery related to Camp Victory contracts. Also, in June 2008, the Division unsealed a plea agreement with U.S. Army Major John Cockerham, a former contracting officer at Camp Arifjan, under which Cockerham had pleaded guilty to bribery, conspiring to launder money, and conspiring to defraud the United States and to commit bribery. Cockerham's wife also pleaded guilty to conspiring to launder money.

In April 2008, the Division unsealed an indictment against a Canadian night vision goggles manufacturing firm and two of its executives for a scheme to defraud the U.S. Army in the supply of equipment for the Iraqi Army. The indictment charged each defendant with wire fraud and conspiracy to commit wire fraud and charged the firm and one of the executives with money laundering. Regional police in Canada arrested the two executives in April 2008. According to the indictment, the defendants agreed to pay, and made an initial payment to, a competitor to withdraw from supplying a U.S. Army unit with night vision goggles so that the defendants could supply the goggles at a substantially inflated price. The Army unit was responsible for training and equipping the Iraqi Army. The alleged scheme could have resulted in an overcharge to the U.S. military of approximately \$11 million.

In August 2008, the Division indicted two U.S. military personnel on charges of bribery and conspiracy relating to the award of construction contracts in Afghanistan. U.S. Army Major Christopher West, the former head of base operations at

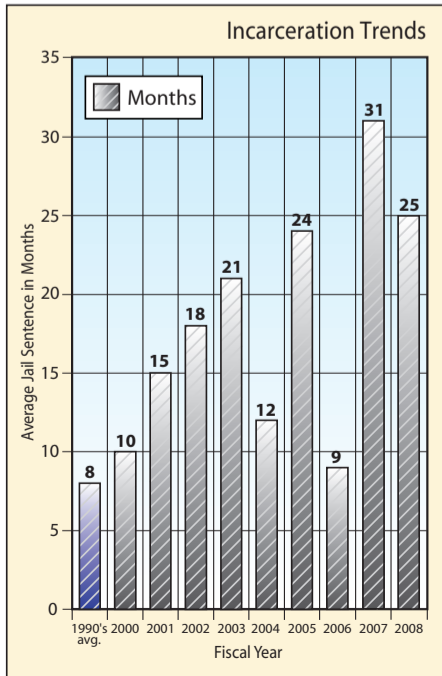


Source: DOJ Antitrust Division

Bagram Airfield, and Air Force Tech. Sgt. Patrick Boyd, a contracting officer at the base, were indicted for receiving tens of thousands of dollars for the award of more than \$1 million in construction contracts to two Afghanistan companies. Four DOD contractors and the two Afghanistan contracting companies were also named in the indictment.

In 2008 and early 2009, the Division charged five individuals and three corporations with participating in fraudulent schemes at two New Jersey Superfund sites, the Federal Creosote site, located in Manville, and the Diamond Alkali site, located in Newark. The defendants were charged with rigging bids and defrauding the Environmental Protection Agency by inflating invoices to cover kickbacks totaling more than \$1.5 million relating to at least \$27 million worth of sub-contracts for supplies and services at the sites. Some defendants were also charged with tax offenses related to the kickback scheme. All charged defendants have pleaded guilty and have been, or are currently waiting to be, sentenced.

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Source: DOJ Antitrust Division

firms, and the competitive significance of alternatives. EAG's findings received support late last year when, following Tunney Act proceedings, the relief obtained by the Division was found to be in the public interest.

Finally, in the transaction between Northwest and Delta, key issues included whether the airlines constrained one another's pricing and whether a merger would permit the parties to achieve cognizable efficiencies. As to the former, extensive cross-section empirical analysis determined that any competitive constraints imposed by one upon the other were quite limited and applied to only a fraction of the firms' far-flung operations. As to efficiencies, EAG economists made use of the parties' own internal computer models while conducting an independent assessment of the potential efficiencies of the transaction, ultimately concluding that cognizable efficiencies were plausible and sufficient.

In addition to its work in the merger arena and as part of its increasing efforts in the area of competition advocacy, EAG organized a workshop on airline economics to mark the 30th anniversary of the Airline Deregulation Act. At the workshop, which was attended by a number of academic experts and trade industry experts, EAG staff members presented two papers dealing with the thorny issue of entry into city-pair markets by firms with existing operations elsewhere and the competitive effects of a capacity agreement among competitors in Hawaii.

EAG staff regularly make formal economic presentations at government and academic conferences and participate in training activities for antitrust attorneys. EAG has also been actively involved in the growing area of international antitrust cooperation and enforcement, largely in the area of training lawyers and economists at nascent competition agencies around the world. Its efforts this year included presentations in China and Korea on the use of empirical tools in antitrust enforcement, and the holding of a three-day workshop for staff members at foreign competition agencies on the use of economics in antitrust enforcement.

The Division also has an active role in prosecuting procurement fraud through the Hurricane Katrina Fraud Task Force. In May 2008, a former contract employee of the U.S. Army Corps of Engineers and a dirt, sand, and gravel subcontractor were indicted on charges of bribery and conspiracy to commit bribery in connection with a \$16 million hurricane protection project for the reconstruction of the Lake Cataouatche Levee, south of New Orleans. Trial is scheduled for early spring.

New York Power Authority

In August 2008, Edward P. Goldblatt, a former purchasing assistant at the New York Power Authority (NYPA), pleaded guilty to conspiring to defraud the authority in a bribery scheme in which he accepted kickback payments from a vendor and caused the authority to pay overcharges that included a portion of the value of the kickbacks. Goldblatt also pleaded guilty to tax evasion for not reporting the kickback payments. He was sentenced to 37 months in jail and ordered to pay, with another individual, \$253,836 in restitution. The NYPA is a non-profit energy corporation that provides low-cost power to government agencies, municipalities, and private entities.

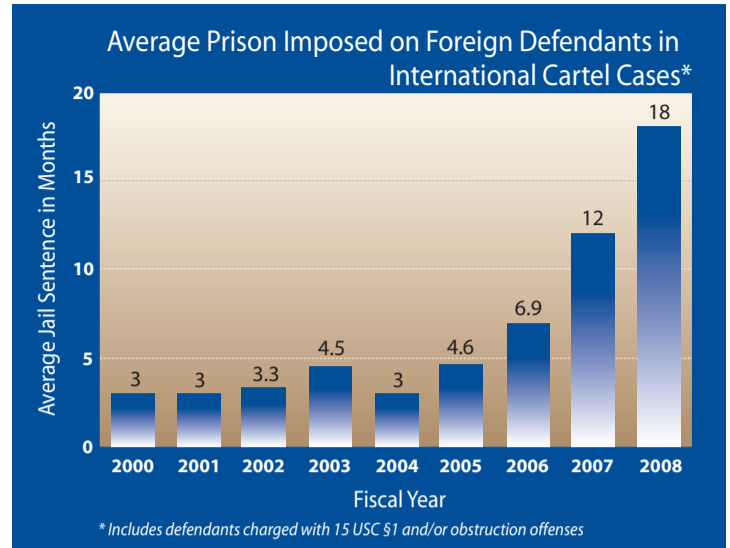
ANTITRUST DIVISION CONTINUES AWARD-WINNING PRO BONO PROGRAM

Antitrust Division personnel continued the Division's long tradition of active pro bono participation this last year.

Particularly noteworthy were their efforts in staffing the D.C. Bar's monthly Saturday morning Pro Bono Advice & Referral Clinic. Volunteers at the Advice & Referral Clinic assist low-income individuals by assessing their legal claims and giving general information and advice on a wide range of civil matters. This clinic serves around 1,000 clients a year, most of whom have nowhere else to turn for legal help.

The Antitrust Division has been responsible for staffing the clinic on a quarterly basis for the last 10 years. It is the only Justice Department component to undertake this commitment. In addition, the Antitrust Division on several occasions has lent a hand to other federal agencies considering making such a commitment.

There are several other pro bono clinics in the D.C. area that Division personnel also help to staff on their own time. One of those is the Employment Justice Center Workers' Rights Clinic, which assists low-income residents with employment issues. Another is the D.C. Bar Pro Bono Program's Small Business



Source: DOJ Antitrust Division

Brief Advice Legal Clinic, which assists small, disadvantaged community entrepreneurs regarding general legal questions they may have about their businesses. A third example is the Domestic Violence Pro Se Clinic, a walk-in clinic for pro se victims of domestic violence.

Just as importantly, Division lawyers and support personnel continue frequently to provide assistance, primarily through the D.C. Bar Pro Bono Case Clinic, to pro bono clients in their individual cases. For example, a Division lawyer recently was co-counsel for a tenant in a pro bono landlord-tenant eviction case in which the tenant had withheld rent because her landlord had failed to make repairs to numerous housing code violations. Similarly, a Division paralegal recently assisted in a pro bono case in which the client was suing to redress the wrongful garnishment of her bank account. Those efforts are similar to those that led to Division lawyers James Yoon and Mark Pletcher winning the Washington Council of Lawyers' Government Pro Bono Award in 2007 and 2006, respectively. The Council noted Yoon's "dedicated support of the DOJ Pro Bono Program" and that Pletcher "serves as an example to all government attorneys."

Also noteworthy this last year were the efforts of personnel in the Division's Chicago Field Office to launch a structured pro bono effort outside of Washington D.C. Their commitment to starting the program was extraordi-

nary. On their own time, these individuals spearheaded efforts to recruit volunteers and find appropriate pro bono opportunities in the Chicago area for federal employees. This included recruiting, screening, and selecting possible Chicago legal services organizations, as well as planning and organizing the event that launched the program. Because of their effort, federal lawyers and support personnel in Chicago are now volunteering their time to organizations such as the Cabrini Green Legal Aid Clinic and the Constitutional Rights Foundation. The Public Interest Law Initiative in Chicago recently nominated the federal government's Chicago program for the ABA Pro Bono Award. Furthermore, at the request of the Office of the Deputy Attorney General, a Division lawyer participates as a federal government representative on the committee that serves as the pro bono information and resources clearinghouse and liaison for the Chicago area.

These efforts are a continuation of the tradition of strong commitment to pro bono service that led to the Division winning the Attorney General's Community Service Award in 2007. It remains true now, as it was noted then, that the Division's commitment to pro bono legal assistance and volunteerism is due to the efforts of all Division employees who give generously of their talents and own time to the community.



The LCD case team from the San Francisco Field Office. (L-R): Alexandra J. Shepard, David J. Ward, Niall E. Lynch, Michael L. Scott, Heather S. Teaksbury.

NETWORKS AND TECHNOLOGY ENFORCEMENT SECTION: ENFORCING THE ANTITRUST LAWS IN HIGH TECH AND FINANCIAL INDUSTRIES

The Networks and Technology Enforcement Section (NTES) is responsible for the enforcement of the antitrust laws and competition advocacy in the areas of computer hardware and software, high tech-

nology component manufacturing, Internet-related businesses, financial services and the securities industry. NTES has more than 40 highly skilled and dedicated professionals and support staff, including five attorneys with more than 30 years of enforcement experience. The NTES team brings together a unique combination of attorneys with technical and industry expertise with a deep knowledge of computer and financial markets. Over the years, NTES has investigated and litigated

a wide range of high profile cases, including in 2008, *U.S. v. Thomson*, a merger of the second- and third-largest financial data providers in the world; in 2004, *U.S. v. Oracle*, a merger of two of the largest providers of high-function financial management and human resource management software; and in 2003, *U.S. v. First Data*, a merger of two of the nation's largest PIN debit networks.

This past year, NTES handled a variety of merger and civil non-merger investigations involving cutting edge technologies, including the services agreement between Yahoo! and Google. Under the agreement, Google would have placed sponsored search and contextual ads on Yahoo! search result pages and on the web pages of Yahoo! syndication partners in the United States and Canada. A fundamental debate raised by the agreement was whether it should be viewed as a traditional "outsourcing" agreement similar to the kinds of agreements Google had with many other web publishers, or whether it should be viewed as a horizontal agreement between competitors that would diminish competition and lead to higher prices and reduced innovation. The evidence developed during the investigation led NTES to conclude that, under the agreement, Google and Yahoo! would have become collaborators rather than competitors. The agreement was abandoned after the Division informed the parties that it would file suit to block implementation of the agreement. This was a multi-jurisdictional investigation; NTES attorneys consulted closely with the Canadian Competition Bureau and Attorneys General from 15 states.

NTES attorneys investigating financial markets encountered a variety of recurring legal issues including network effects, two-sided markets and vertical integration. Vertical issues and network effects were a central part of the Division's analysis of the Chicago Mercantile Exchange's (CME) acquisition of the Chicago Board of Trade (CBOT). CME and CBOT were two of the largest futures exchanges in the United States and CME provided clearings services for its own futures contracts and CBOT's. The net-

work effects created by common ownership of an exchange can generate efficiencies, but they can also make it more difficult for potential exchange competitors to enter the market. The Division ultimately determined the transaction would not have anticompetitive effects based, in part, on its conclusion that the futures products offered by CME and CBOT were not close substitutes and neither firm was likely to introduce new products to compete directly with the other's established products.

In addition to merger and civil non-merger enforcement, NTES has put significant efforts into assuring Microsoft's compliance with the Department's consent decree. The consent decree was the result of a settlement negotiated after the Division proved that Microsoft had a monopoly position in the IBM-based PC operating system market and that Microsoft unlawfully maintained that monopoly by engaging in exclusionary conduct to thwart threats to its operating system monopoly from middleware products such as Internet browsers. The decree has effectively prevented Microsoft from continuing its anti-competitive practices and has restored the ability of software vendors to develop middleware products that might erode the domi-

NTES has an active competition advocacy program. In the area of the unauthorized practice of law, NTES reviews proposed legislation and state supreme court rules that would unnecessarily limit competition between lawyers and non-lawyers by defining certain services as the practice of law. The Division has advocated that the definition of the practice of law should be limited to activities for which specialized legal knowledge and training is demonstrably necessary. In areas where legal knowledge and training is not necessary, such as real estate title searches, consumers may benefit from competition between lawyers and non-lawyers. The Division recently filed comments with the New York State Assembly, Wisconsin Supreme Court, and Supreme Court of Hawaii advocating against proposals that would bar non-lawyers from providing these types of services. NTES also periodically provides competition advice to the Department of Commerce in its oversight of the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is responsible for technical elements of the Internet domain name system and competition for generic top level domain name registrations. On Dec. 3, 2008, the Division advised Commerce to encourage ICANN to man-

COMPETITION ADVOCACY AND TRANSPARENCY

The Division acts as a strong advocate for competition, seeking to promote competition in sectors of the economy (including, but not limited to, such major industries as telecommunications, transportation, and energy) subject to federal, state, and local government regulation. The Division's role in this area is relatively simple: to promote reliance on competition wherever appropriate and to ensure that any necessary regulation is well designed to achieve its objectives and disrupts market forces no more than necessary. Some of our recent efforts include the following:

Telecommunications: In November 2008, the Department of Justice published *Voice, Video and Broadband: The Changing Competitive Landscape and its Impact on Consumers*. The report addresses a number of issues that may affect consumers of telecommunications services and antitrust analysis in the industry. Chapter 1 provides an overview of developments in the three industry segments addressed at the symposium: video, telephony, and broadband. Chapter 2 summarizes the evidence presented on the competitive effects of additional entry in the three industry segments. The broad consensus was that competition provides consumers with significantly more choice today than they had in the past—more providers, greater variety in video entertainment, and a wider selection of devices to access the Internet. Chapter 3 discusses possible obstacles to entry. Chapter 4 discusses the Department's future competition advocacy and enforcement activities. The report stresses the importance of taking into account changing industry dynamics, relying on evidence of market conditions, and having reliable data and sophisticated economic frameworks to study the competitive conditions in this dynamic industry. The Department remains committed to monitoring the industry vigilantly, investigating alleged antitrust violations, and enforcing the antitrust laws against anticompetitive practices harming consumers. The report is available at <http://www.usdoj.gov/atr/public/reports/239284.pdf>.

Airline Industry: In October 2008, the Division hosted a workshop on recent developments in airline antitrust and competition research to mark the 30th anniversary of airline deregulation in the United States. Topics addressed at the workshop included the pricing effects of airline antitrust immunity, airline pricing during and after bankruptcy, the price effect of eliminating potential competition, and regulatory reform in the airline industry. Workshop materials are available at <http://www.usdoj.gov/atr/public/workshops/airlines2008/index.htm>.

Health Care: In the past year, the Division continued to provide advice to states on Certificate-of-Need (CON) laws. In September 2008, the Division and the Federal Trade Commission urged the Illinois Task Force on Health Planning Reform to consider seriously whether Illinois's CON law does more harm than good, detailing how CON laws can impede the efficient performance of health care markets. A copy of the letter is available at <http://www.usdoj.gov/atr/public/comments/237351.htm>. In June 2008, the Division recommended that Michigan reject proposed CON rules for a certain cancer therapy that likely would permit only a single facility, run by a majority of current competitors for radiation oncology services, in the state. A copy of that letter is available at <http://www.usdoj.gov/atr/public/comments/234407.htm>.

Real Estate: The Division advised that proposed Montana legislation requiring real estate brokers to participate in all aspects of buying a home would harm consumers by denying them the opportunity to save money by purchasing a subset of services from fee-for-service brokers and by insulating traditional full-service brokers from competition from fee-for-service brokers. A copy of that letter is available at <http://www.usdoj.gov/atr/public/comments/238921.htm>.



The Networks and Technology Section.

nance of Microsoft's Windows operating system. NTES staff has worked constructively with European Commission (EC) staff, which has pursued its case against Microsoft for violating EC competition laws, to ensure that the EC's actions do not create any undue conflict with NTES's continuing enforcement efforts.

age the introduction of new generic top level domains in a manner that safeguards the interests of domain name customers in obtaining high quality domains at the lowest possible price.

